IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1770 OF 2004

Rajesh Mansukhlal Harsora ...Petitioner

Versus

Arvind Amrutlal Harsora & Ors. ...Respondents

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Mr. A.A. Kumbhkoni with Mr. M.S. Karnik, counsel for Petitioner

Mr. R.S. Datar, counsel for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 1ST APRIL, 2005

P. C.:-

1. Heard Mr. Kumbhkoni with Mr Karnik, the learned counsel for the petitioner who has instituted Special Civil Suit No. 191 of 2002 praying for declaration that he is the owner of the property of Trust by name Harsora Family Trust. In the said suit an application at Exh.58 was moved for amendment on or about 14.11.2003. By the proposed amendment the plaintiff sought to include Dena Bank as defendant No.8, Mr. Shivraj @ Shivaji Maruti Jadhav as defendant No.9 and Navi Mumbai Municipal Corporation as defendant No.10. The said application has been partly allowed by the trial court vide his order dated 23.1.2004 and hence, this petition.

2. By the said order the trial court has allowed the application to the extent of Mr. Jadhav being impleaded as defendant No.8 and the application for impleading the Bank and the Municipal Corporation has been rejected. The Court has further directed to add Cidco as a necessary party in the Suit and carry out the amendment accordingly.

3. The Dena Bank had purportedly sanctioned loan on the basis of the deed of equitable mortgage dated 24.10.1985 in respect of the suit property. The trial Court held in case the petitioner's right over the suit property is accepted finally, he has the remedy to challenge the mortgage deed and it was not necessary to impleade the Bank as a necessary party in the suit. For impleading the Navi Mumbai Municipal Corporation, the trial Court noted that the plaintiff did not bring on record any order passed by the Corporation declaring the construction undertaken by the Trust, if any, as illegal. As at present, the claim of the petitioner is under consideration in the pending suit and it appears that the land has been taken on lease from Cidco and, therefore, the trial court rightly directed that the Cidco to be impleaded as a necessary party. The illegal constructions, if any, can be proceeded against by the Municipal Corporation even without being impleaded as a

necessary party in the suit. The trial court having applied its mind to the averments made by the respective parties and also the nature of the claim in the pending suit, reached to the conclusion that the Bank as well as the Municipal Corporation are not required to be added as necessary parties and this conclusion cannot be termed as a perverse or manifestly erroneous.

4. Hence, the petition is rejected summarily.